In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1390

ELMER HARRIS, PETITIONER

v.

L. J. ULANICH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner, a black civilian employee of the United States Navy, challenges the district court's finding, upheld by the court of appeals, that he was not subjected to racial discrimination by his federal employer.

Petitioner is employed at the Naval Supply Center, Norfolk, Virginia. He filed three administrative complaints with the Center in 1973, contending (1) that he had been denied the opportunity fully to perform his duties because of racially motivated employment discrimination; (2) that because he filed a discrimination complaint to rectify that situation, he had been issued a "Letter of Warning" in reprisal; and (3) that the reprisal had culminated in his demotion from General Foreman, WS-10, to Warehouseman Foreman, WS-6. Each of the complaints was denied by the Navy on the basis of administrative findings that petitioner had not been subjected to racial discrimination.

Petitioner thereupon filed this action under 42 U.S.C. (Supp. IV) 2000e-16, asserting each of the complaints that he had raised administratively. The district court, recognizing that the courts were in disagreement over whether a plaintiff in petitioner's situation was entitled to a *de novo* trial rather than a review of the administrative record,[1] held a full trial and filed an extensive opinion (Pet. App. 1-33). The court concluded that "[r]eviewing the administrative record and hearing the evidence *de novo*, and taking them singularly or combined, there is clearly insufficient evidence to support [petitioner's] contentions of any discrimination because of his race" (Pet. App. 32). The court of appeals affirmed on the basis of the district court's opinion, ruling that "[t]he district judge's findings were not clearly erroneous" (Pet. App. 34-35).

Petitioner argues only that the district court's findings were clearly erroneous. The court of appeals considered and correctly rejected that contention, and there is no reason for further review. See, *e.g.*, *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275; *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY 1976.

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[1]That issue is before this Court in *Chandler* v. *Roudebush*, No. 74-1599, argued March 2, 1976.